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CH/2751/2007

Case law

Case law date	11/12/2007
Commission/Judge	Commissioner Turnbull

Challenge to the decision in R(H) 2/07 - application for permission

The claimants suffered from a mild learning disability with some challenging behaviour. They were accommodated in supported housing provided by Rivendell Lake Housing Association Limited ("Rivendell"). A package of care, support or supervision was commissioned and funded through Walsall Social Services and provided by a care provider called Lifeways Community Care ("Lifeways"). Walsall had been paying Rivendell the whole of the claimant's rent as HB at £195.27 per week. However, this was restricted to £65 per week in the light of the Commissioner Turnbull's decision in R(H) 2/07. The claimants applied for permission to appeal arguing that R(H) 2/07 had been wrongly decided because Commissioner Turnbull had placed reliance on the judgment of Gibson J at first instance in *Gaspet Ltd v Elliss Inspector of Taxes [1985] 1 WLR 1214*, when unknown to the Commissioner, the case had gone on appeal, to the Court of Appeal in [1987] 1 WLR 769. The Court of Appeal's reasoning supported a wider interpretation being given to the phrase "on behalf of" which would have allowed an arrangement between a housing provider and a care provider in the form of a joint venture to come within the definition of " exempt accommodation". In particular, the Court:

- said that "undertaking the research" refers to persons who have commissioned it, in a wide sense, i.e. without any direct contractual link as a necessary requirement; and
- had attached considerable significance to the presence of the word "directly" in the statutory test under consideration in Gaspet, whereas, this word did not appear in the definition of "exempt accommodation".

Hence it was arguable that the phrase "on behalf of" did not requires such a close relationship so as to preclude an arrangement that was merely "for the benefit of" or "in the best interests of" the landlord.

Commissioner Turnbull disagreed and after reaffirming his reasoning in R(H) 2/07 refused the claimants permission to appeal.